

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

James Compton And Terri Compton

Case No. 09-80337

Chapter 13

Social Security No. xxx-xx-1853 and xxx-xx-6534
Address: 5327 Russell Rd., Durham, NC 27712-

Debtors

**AMENDED MOTION TO RECONSIDER AUTOMATIC DISMISSAL AND TO
MODIFY PLAN**

NOW COME the Debtors, by and through counsel undersigned, who move, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtors show unto this Court the following:

1. This case was filed on February 27, 2009, with the Chapter 13 plan being subsequently confirmed on May 26, 2009.
2. The Debtors plan was modified in August 2010 as follows:

From: \$1,324.00 per month.

To: \$1,324.00 per month through July 2010, followed thereafter by \$1,180.00 per month, starting in September 2010.
3. At that time, the Chapter 13 Trustee's Motion to Dismiss this case was denied, subject to the Debtors making all payments due in the next twelve (12) months within thirty (30) days of their due date or the case would subsequently dismissed without further hearing.
4. On May 4, 2011, the Trustee filed a Motion to Dismiss stating that the "last full payment was for February, 2011 and the Debtors are delinquent a total of \$1,108.00."
5. Said Motion was granted on May 6, 2011.
6. The Male Debtor contacted the Chapter 13 Trustee's office about this lapse and was continuing to make payments, when his case was automatically dismissed.

7. Since the August 2010 Motions to Modify and to Dismiss, the Debtors have in fact made payments as follows:

Date	Source	Amount
August 26, 2010	Payroll Deduction	\$115.39
September 2, 2010	Payroll Deduction	\$115.39
September 9, 2010	Payroll Deduction	\$115.39
September 16, 2010	Payroll Deduction	\$115.38
September 23, 2010	Payroll Deduction	\$115.39
September 30, 2010	Payroll Deduction	\$115.39
October 1, 2010	Personal Check	\$608.00
October 7, 2010	Payroll Deduction	\$115.39
October 14, 2010	Payroll Deduction	\$115.39
October 21, 2010	Payroll Deduction	\$115.38
October 28, 2010	Payroll Deduction	\$115.39
November 1, 2010	Personal Check	\$608.00
November 4, 2010	Payroll Deduction	\$115.39
November 29, 2010	Payroll Deduction	\$115.39
December 2, 2010	Payroll Deduction	\$115.38
December 9, 2010	Payroll Deduction	\$115.39
December 16, 2010	Payroll Deduction	\$115.39
December 28, 2010	Payroll Deduction	\$115.38
December 30, 2010	Payroll Deduction	\$115.39
January 6, 2011	Personal Check	\$608.00
January 6, 2011	Payroll Deduction	\$115.39
January 13, 2011	Payroll Deduction	\$115.39
January 20, 2011	Payroll Deduction	\$115.38
January 27, 2011	Payroll Deduction	\$115.39
February 3, 2011	Payroll Deduction	\$115.39

February 9, 2011	Payroll Deduction	\$115.39
February 16, 2011	Payroll Deduction	\$115.38
February 24, 2011	Payroll Deduction	\$115.39
February 25, 2011	Cashier's Check	\$608.00
March 3, 2011	Payroll Deduction	\$115.39
March 10, 2011	Payroll Deduction	\$115.39
March 14, 2011	Personal Check	\$115.38
March 17, 2011	Payroll Deduction	\$115.39
March 24, 2011	Payroll Deduction	\$115.39
March 31, 2011	Payroll Deduction	\$115.38
April 4, 2011	Personal Check	\$608.00
April 7, 2011	Payroll Deduction	\$115.39
April 14, 2011	Payroll Deduction	\$115.39
April 21, 2011	Payroll Deduction	\$115.38
April 28, 2011	Payroll Deduction	\$115.39
May 5, 2011	Payroll Deduction	\$115.39
Total:		\$7,193.95

8. If there is a delinquency in the Debtors' payments, it is a result of the Male Debtor not receiving social security disability for one month, causing a temporary lapse in payments.
9. There appear to be gaps in the payroll deduction from the Male Debtors employment. The Debtors were not specifically aware of these gaps nor the need to make supplemental direct payments.
10. Based on these payments, the Debtors were current through their February 2011 payment, but believed that they had made suitable arrangements with the Chapter 13 Trustee's office to make on-going payments.
11. The Debtors learned of this dismissal while attempting to make another \$608.00 direct payment to the Chapter 13 Trustee.
12. The Debtor stand ready to make such direct payment, as well as any additional direct payments or amounts that would otherwise have been payroll deducted, that come due during the pendency of this Motion.

13. The Debtors plan will need to be further modified as follows:

From: \$1,324.00 per month through July 2010, followed thereafter by \$1,180.00 per month, starting in September 2010.
To: \$1,324.00 per month through July 2010, followed thereafter by \$1,180.00 per month, starting in September 2010, then \$1,220.00 per month, starting in June 2011.

14. In the event that calculations by the Chapter 13 Trustee indicate a higher payment is necessary, the Debtors agree to such payment in advance.

15. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325.

Appended Application for an Additional Attorney Fee

16. Counsel for the Debtors further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify.

WHEREFORE, the Debtors pray that this Court grant their Motion, reconsider the dismissal and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion,

Dated: May 26, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward C. Boltz

Edward C. Boltz

North Carolina State Bar No.: 23003

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Case No. 09-80337

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Social Security No. xxx-xx-1853 and xxx-xx-6534
Address: 5327 Russell Rd., Durham, NC 27712-

Debtors

CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on May 26, 2011, I served copies of the foregoing **AMENDED MOTION TO RECONSIDER AUTOMATIC DISMISSAL AND TO MODIFY PLAN** electronically, or when unavailable, by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II
Chapter 13 Trustee
Michael West
U.S. Bankruptcy Administrator

James Compton And Terri Compton
5327 Russell Rd.,
Durham, NC 27712-

All creditors with duly filed claims as listed on the attached Report of Claims Filed at the addresses listed thereon.

/s Renee Nolte
Renee Nolte